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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------------|
| 10/590,905 | 09/04/2007 | Jean-Francois Zagury | ZAGURY8A | 5704 |
| 1444 7590 07/20/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303 | | | EXAMINER EMCH, GREGORY S | |
| | | | ART UNIT 1649 | PAPER NUMBER |
| | | | MAIL DATE 07/20/2010 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/590,905 | Applicant(s) ZAGURY, JEAN-FRANCOIS | |
| | Examiner Gregory S. Emch | Art Unit 1649 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,10,12-14,17,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,12-14,17 and 22 is/are allowed.
- 6) ☒ Claim(s) 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Claims 1, 3, 12, 13, 17 and 21 have been amended, claims 4-8, 11, 18 and 20 have been canceled and claim 22 has been added as requested in the amendment filed on 26 April 2010. Following the amendment, claims 1, 3, 10, 12-14, 17, 21 and 22 are pending in the instant application.

Claim 21 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 14 December 2009.

Claims 1, 3, 10, 12-14, 17 and 22 are under examination in the instant office action.

Withdrawn Rejections

The objection to claim 1 is withdrawn in response to the amendment of said claim to delete residue numbers.

Any outstanding rejection of claim 11 is hereby withdrawn in response to the cancellation of said claim.

The rejection of claims 1, 3, 10, 12, 13 and 17 under 35 U.S.C. 101 is withdrawn in response to the amendment of the claims to add "isolated".

The rejection of claim 12 under 35 U.S.C. 112, second paragraph is withdrawn in response to the amendment of said claim to delete "such as".

The rejection of claims 1, 3, 12, 13 and 17 under 35 U.S.C. 102(b) as being anticipated by Rathjen et al. (US Patent no. 5,795,859) is withdrawn in response to the amendment of claim 1 to recite “consisting of a sequence with more than 80% identity to SEQ ID NO: 5”.

The rejection of claims 1, 3, 13, 14 and 17 under 35 U.S.C. 102(b) as being anticipated by Jensen et al. (WO 98/46642, published 22 October 1998) is withdrawn in response to the amendment of claim 1 to recite “consisting of a sequence with more than 80% identity to SEQ ID NO: 5”.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by Rathjen et al. (US Patent no. 5,795,859, issued 18 August 1998; Citation A on PTO-892 dated 29 December 2009).

Rathjen et al. teach a 26 amino acid peptide originating from mammalian TNF α , which comprises an amino acid sequence with 100% identity to SEQ ID NO: 5 (see sequence alignment, below). The patent teaches derivatives of the peptides of the invention (col.6, lines 7-18). Given that the patent teaches a peptide which fully comprises SEQ ID NO: 5 (i.e. has 100% local identity with SEQ ID NO: 5), this peptide

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meets the limitations of a derivative of SEQ ID NO: 5, thus meeting the limitations of claim 10.

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US-08-178-268-47
; Sequence 47, Application US/08178268
; Patent No. 5795859
; GENERAL INFORMATION:
;   APPLICANT: RATHGEN, Deborah A
;   APPLICANT: WIDMER, Fred
;   APPLICANT: GRIGG, Geoffrey W
;   APPLICANT: MACK, Philip O
;   TITLE OF INVENTION: Peptide which Abrogates TNF and/or LPS Toxicity
;   NUMBER OF SEQUENCES: 47
;   CORRESPONDENCE ADDRESS:
;     ADDRESSEE: Nixon & Vanderhye P.C.
;     STREET: 1100 No. 5795859th Glebe Road, 8th Floor
;     CITY: Arlington
;     STATE: Virginia
;     COUNTRY: USA
;     ZIP: 22201-4714
;   COMPUTER READABLE FORM:
;     MEDIUM TYPE: Floppy disk
;     COMPUTER: IBM PC compatible
;     OPERATING SYSTEM: PC-DOS/MS-DOS
;     SOFTWARE: PatentIn Release #1.24
;   CURRENT APPLICATION DATA:
;     APPLICATION NUMBER: US/08/178,268
;     FILING DATE: 05-JAN-1994
;     CLASSIFICATION: 530
;   ATTORNEY/AGENT INFORMATION:
;     NAME: MITCHARD, Leonard C
;     REGISTRATION NUMBER: 29,009
;     REFERENCE/DOCKET NUMBER: 47-45
;   TELECOMMUNICATION INFORMATION:
;     TELEPHONE: (703) 816-4000
;     TELEFAX: (703) 816-4100
;   INFORMATION FOR SEQ ID NO: 47:
;     SEQUENCE CHARACTERISTICS:
;       LENGTH: 26 amino acids
;       TYPE: amino acid
;       STRANDEDNESS: single
;       TOPOLOGY: both
;     MOLECULE TYPE: peptide
US-08-178-268-47

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Query Match          100.0%; Score 64; DB 1; Length 26;
Best Local Similarity 100.0%;
Matches 12; Conservative 0; Mismatches 0; Indels 0; Gaps 0;

Qy      1 DYLDFAESGQVY 12
        |||||
Db      9 DYLDFAESGQVY 20

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Claim 10 stands rejected under 35 U.S.C. 102(b) as being anticipated by Jensen et al. (WO 98/46642, published 22 October 1998; Citation N on PTO-892 dated 29 December 2009).

Jensen et al. teach peptides originating from mammalian TNF α , including one which comprises an amino acid sequence with 100% identity to SEQ ID NO: 5 (see e.g, Jensen's SEQ ID NO: 4). The reference teaches derivatives of the peptides of the invention (see p.24, lines 1-4, Examples). Given that the patent teaches a peptide which fully comprises SEQ ID NO: 5 (i.e. has 100% local identity with SEQ ID NO: 5), this peptide meets the limitations of a derivative of SEQ ID NO: 5, thus meeting the limitations of claim 10.

Conclusion

Allowable Subject Matter

Claim 10 is rejected.

Claims 1, 3, 12-14, 17 and 22 are allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory S. Emch whose telephone number is (571) 272-8149. The examiner can normally be reached 9:00 am - 5:30 pm EST (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey J. Stucker can be reached at (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G.E./

Gregory S. Emch
Patent Examiner
Art Unit 1649
17 July 2010

/Daniel E Kolker/
Primary Examiner, Art Unit 1649
July 19, 2010